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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,402	01/03/2005	Jensen-Jarolim Erika	37488.00400US	2790

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MILBANK, TWEED, HADLEY & MCCLOY LLP
INTERNATIONAL SQUARE BUILDING
1850 K STRET, N.W., SUITE 1100
WASHINGTON, DC 20006

EXAMINER	
LE, EMILY M	

ART UNIT	PAPER NUMBER
1648	

MAIL DATE	DELIVERY MODE
02/24/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/501,402	ERIKA ET AL.	
	Examiner	Art Unit	
	EMILY M. LE	1648	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 January 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on *22 January 2009*. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/EMILY M LE/
Primary Examiner, Art Unit 1648

Continuation of 11. does NOT place the application in condition for allowance because: The claims remain rejected for reason(s) of record. To summarize, Vande-Velde teaches a vaccine composition comprising an antigenically active substance and a gastric acid reducing substance. Vande-Velde teaches of many gastric acid reducing substances. However, it is not readily apparent if the many gastric acid reducing substances disclosed by Vande-Velde acts protectively through the mucous membrane. However, at the time the invention was made, Zanone teaches of gastric acid reducing substances. The gastric acid reducing substances disclosed by Zanone includes those disclosed by Vande-Velde. The gastric acid reducing substances disclosed by Zanone et al. also include those that act protectively through the mucous membrane. In the instant case, Vande-Velde establishes that the use of any known gastric acid reducing substance can be used with his vaccine composition. Thus, in view of both Vande-Velde and Zanone, it would have been prima facie obvious for one of ordinary skill in the art to use one antacid as an alternative for the other.

Applicant's claim of unexpected results has also been considered, however, it is not found persuasive. Vande-Velde failure to disclose that the addition of antacids to stimulate a Th2 immune response is not sufficient to evidence that Applicant's observation of a Th2 immune response is unexpected.

Applicant's claim that Vande-Velde teaches away from the claimed invention because Vande-Velde teaches that a lower immune response was induced compared Applicant's observation. Applicant's argument has been considered, however, it is not found persuasive because a direct comparison cannot readily be made between the two experiments. Moreover, contrary to Applicant's assertion, Vande-Velde, at paragraph 0069, notes that significant immune response was observed with the booster shot(s).

Further examination of the application may be obtained by filing a request continued examination (RCE) filed under 37 CFR 1.114 with a submission (i.e., an amendment that meets the reply of 37 CFR 1.111) and the fee set forth in 37 CFR 1.17(e). MPEP 714.13.